



Billing Code 4810-AS-P

## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

### **31 CFR Part 210**

### **RIN 1510-AB32**

## **Federal Government Participation in the Automated Clearing House**

**AGENCY:** Bureau of the Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking with request for comment.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is proposing to amend its regulation governing the use of the Automated Clearing House (ACH) Network by Federal agencies. Our regulation adopts, with some exceptions, the NACHA Operating Rules developed by NACHA – The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that NACHA has made to the NACHA Operating Rules since the publication of the 2013 NACHA Operating Rules & Guidelines book. These changes include amendments set forth in the 2014, 2015, and 2016 NACHA Operating Rules & Guidelines books.

**DATES:** Comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments on this rule, identified by docket FISCAL-2016-0001, should only be submitted using the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions on the Web site for submitting comments.
- *Mail:* Ian Macoy, Bureau of the Fiscal Service, 401 14th Street, SW, Room 400B, Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to Fiscal Service have been decommissioned.

*Instructions:* All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL-2016-0001 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You can download this proposed rule at the following website:  
[https://www.fiscal.treasury.gov/fsservices/instit/pmt/ach/ach\\_home.htm](https://www.fiscal.treasury.gov/fsservices/instit/pmt/ach/ach_home.htm). You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW,

Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on [www.regulations.gov](http://www.regulations.gov). Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director of Settlement Services, at (202) 874-6835 or [ian.macoy@fiscal.treasury.gov](mailto:ian.macoy@fiscal.treasury.gov); or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or [natalie.diana@fiscal.treasury.gov](mailto:natalie.diana@fiscal.treasury.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. Part 210 incorporates the NACHA Operating Rules, with certain exceptions. From time to time the Fiscal Service amends Part 210 in order to address changes that NACHA periodically makes to the NACHA Operating Rules or to revise the regulation as otherwise appropriate.

Currently, Part 210 incorporates the NACHA Operating Rules as set forth in the 2013 NACHA Operating Rules & Guidelines book. NACHA has adopted a number of changes to the NACHA Operating Rules since the publication of the 2013 NACHA Operating Rules &

Guidelines book. We are proposing to incorporate in Part 210 most, but not all, of these changes. We are also proposing two changes to Part 210, related to reversals and prepaid cards, that do not stem from a change to the NACHA Operating Rules.

We are requesting public comment on all the proposed amendments to Part 210.

## **II. Summary of Proposed Rule Changes**

### **A. 2014 NACHA Operating Rules & Guidelines Book Changes**

The 2014 edition of the NACHA Operating Rules & Guidelines contains changes related to the following amendments:

- Person-to-Person Payments via ACH;
- IAT Modifications; Proof of Authorization for Non-Consumer Entries;
- Dishonored Returns and Contested Dishonored Returns Related to an Unintended Credit to a Receiver;
- Reclamation Entries – Corrections to Rules Governing Authorizations;
- Incomplete Transaction Clarification;
- Use of Tilde as Data Segment Terminator;
- Editorial Clarification – Non-Consumer Receiver’s Obligation to Credit Originator’s Account;
- Prenotification Entries – Reduction in Waiting Period for Live Entries;
- Notification of Change (NOC) – Removal of Change Code C04 (Incorrect Individual Name/Receiving Company Name); and
- ACH Operator Edit for Returns.

We are proposing to incorporate in Part 210 all of the foregoing amendments, which are

summarized below, except the amendment relating to reclamation entries.

## **1. Person-to-Person Payments via ACH**

This amendment standardized the use of the ACH Network for Person-to-Person (P2P) Entries by expanding the Internet-Initiated/Mobile (WEB) SEC Code to accommodate credit Entries transmitted between consumers (P2P transactions). A P2P Entry is defined as “a credit Entry initiated by or on behalf of a holder of a Consumer Account that is intended for a Consumer Account of a Receiver.” The amendment also modified the definition of a Customer Initiated Entry (CIE) to “a credit Entry initiated by or on behalf of the holder of a Consumer Account to the Non-Consumer Account of a Receiver.” These definitional changes ensure there is a clear differentiation between WEB credit and CIE – i.e., CIE for a bill payment from a consumer to a business, and WEB credit for a P2P transaction from one consumer to another or between consumer accounts belonging to the same person. In addition, this amendment clarified the treatment of NOCs related to credit WEB Entries and CIE Entries.

We are proposing to accept this amendment.

## **2. IAT Modifications**

This amendment revised the NACHA Operating Rules to update the rules and formatting of the International ACH Transaction (IAT) in order to facilitate more accurate screening and compliance with OFAC sanctions policies. This modification requires a Gateway to identify within an Inbound IAT Entry (1) the ultimate foreign beneficiary of the funds transfer when the proceeds from a debit Inbound IAT Entry are for further credit to an ultimate foreign beneficiary that is a party other than the Originator of the debit IAT Entry, or (2) the foreign party ultimately funding a credit Inbound IAT Entry when that party is not the Originator of the credit IAT Entry. This amendment revised the description of the Payment Related Information Field as it relates to

the IAT Remittance Addenda Record to establish specific formatting requirements for inclusion of the ultimate foreign beneficiary's/payer's name, street address, city, state/province, postal code, and ISO Country Code. The amendment also requires an Originator, Third-Party Sender, Originating Depository Financial Institution (ODFI), or Gateway transmitting an IAT Entry to identify any country named within the IAT Entry by that country's 2-digit alphabetic ISO Country Code, as defined by the International Organization for Standardization's (ISO) 3166-1-alpha-2 code list.

We are proposing to accept this amendment.

### **3. Proof of Authorization for Non-Consumer Entries**

This amendment established a minimum standard for proof of authorization for Non-Consumer Entries to aid in the resolution of unauthorized or fraudulent debits to businesses, particularly those where no trading partner relationship/agreement exists between the Originator and Receiver. This change permits a Receiving Depository Financial Institution (RDFI) to request proof of a Non-Consumer Receiver's authorization for a CCD, CTX, or an Inbound IAT Entry to a Non-Consumer Account. The ODFI must provide the required information to the RDFI at no charge within ten banking days of receiving a written request for such information from the RDFI. The amendment also requires the Originator to provide such proof of authorization to the ODFI for its use or for use by the RDFI.

The amendment provides two methods by which an ODFI can comply with the RDFI's request for proof of authorization. The first is to provide an accurate record of the authorization. The second is to provide the Originator's contact information that can be used for inquiries about authorization of Entries. At a minimum, this contact information must include (1) the Originator's name, and (2) the Originator's phone number or email address for inquiries

regarding authorization of Entries.

We are proposing to accept this amendment.

#### **4. Dishonored Returns and Contested Dishonored Returns Related to an Unintended Credit to a Receiver**

This amendment established the right of an ODFI to dishonor the Return of a debit Erroneous Entry if the Return Entry results in an unintended credit to the Receiver because (1) the Return Entry relates to a debit Erroneous Entry, (2) the ODFI has already originated a credit Reversing Entry to correct the Erroneous Entry, and (3) the ODFI has not received a Return of that credit Reversing Entry.

Similarly, under this amendment an ODFI may dishonor the Return of a debit Reversing Entry if the Return Entry results in an unintended credit to the Receiver because (1) the Return Entry relates to a debit Reversing Entry that was intended to correct a credit Erroneous Entry, and (2) the ODFI has not received a Return of that credit Erroneous Entry. The amendment requires an ODFI dishonoring a debit Return Entry under either of these conditions to warrant that it originated a Reversal in an effort to correct the original erroneous transaction and therefore is dishonoring the Return of the debit Erroneous Entry or the debit Reversing Entry, either of which causes an unintended credit to the Receiver. The amendment also establishes the right of an RDFI to contest this type of dishonored Return if either of the following conditions exists: (1) the RDFI returned both the Erroneous Entry and the related Reversal; or (2) the RDFI is unable to recover the funds from the Receiver.

We are proposing to accept this amendment.

#### **5. Reclamation Entries – Corrections to Rules Governing Authorization**

This amendment made several corrections to the rules governing the authorization of Reclamation Entries. These changes address technical and drafting discrepancies between Reversing Entries and Reclamation Entries in the NACHA Operating Rules and make the rules related to Reclamation Entries consistent with those for Reversing Entries to the extent possible.

We are proposing not to incorporate this amendment in Part 210. Part 210 generally excludes all NACHA Operating Rules relating to the reclamation of benefit payments because Part 210 contains specific provisions on the reclamation of Federal benefit payments. No revision to the text of Part 210 is required to exclude this amendment from Part 210 because the amendment modifies Section 2.10 of the NACHA Operating Rules, which is already inapplicable to the government under § 210.2(d)(2).

## **6. Incomplete Transaction Clarifications**

The Incomplete Transaction Clarifications amendment recognizes certain ARC, BOC, and POP Entries to Non-Consumer Accounts as eligible for return under the Incomplete Transaction Rule. This change streamlines RDFIs' processing of ARC, BOC, and POP returns and improves their ability to comply with the NACHA Operating Rules by eliminating different processing requirements for unauthorized/improper consumer and non-consumer ARC, BOC, and POP Entries, which share the same Standard Entry Class Code. The change restores the RDFI's ability to rely solely on the Standard Entry Class Code when determining handling requirements for specific types of Entries. This amendment also added specific references to "consumer" Receivers, where appropriate, to add clarity regarding the scope of the Incomplete Transaction Rules.

This amendment modifies Article Three, Subsection 3.12.3 (Incomplete Transaction) to add the word "consumer" to clarify that the Receiver of an Incomplete Transaction is generally



the owner of a consumer account, with one specific exception. The amendment also adds language to this subsection to state that an ARC, BOC, or POP Entry may also be considered an Incomplete Transaction regardless of whether the account that is debited is a Consumer Account or a Non-Consumer Account. The amendment made corresponding changes to the definition of an Incomplete Transaction in Article Eight, Section 8.50 and clarified that a Written Statement of Unauthorized Debit must be accepted for any Incomplete Transaction involving any ARC, BOC, or POP Entry.

We are proposing to accept this amendment.

#### **7. Use of Tilde as Data Segment Terminator**

This amendment corrected two IAT field descriptions, “Originator City and State/Province” and “Receiver City and State/Province,” to clarify that the tilde (“~”) is a valid data segment terminator.

We are proposing to accept this amendment.

#### **8. Editorial Clarification – Non-Consumer Receiver’s Obligation to Credit Originator’s Account**

This amendment revised the text and title of Article Three, Subsection 3.3.1.3 (Non-Consumer Receiver Must Credit Originator’s Account) to make the section’s intent clearer and easier to understand for ACH Network participants. This change was editorial in nature only.

We are proposing to accept this amendment.

#### **9. Prenotification Entries – Reduction in Waiting Period for Live Entries**

This amendment reduced the six banking-day waiting period between initiation of a Prenotification and “live” Entries for Originators choosing to originate Prenotes. This amendment also modified the NACHA Operating Rules related to Notifications of Change to

clarify the Originator's obligations with respect to an NOC received in response to a Prenote. This change permits an Originator that has originated a Prenotification Entry to a Receiver's account to initiate subsequent Entries to the Receiver's account as soon as the third Banking Day following the Settlement Date of the Prenotification Entry, provided that the ODFI has not received a return or NOC related to the Prenotification.

We are proposing to accept this amendment.

**10. Notification of Change – Removal of Change Code C04 (Incorrect Individual Name/Receiving Company Name)**

This amendment removed the Notification of Change Code – C04 (Incorrect Individual Name/Receiving Company Name) from the NACHA Operating Rules. Change Code C04 (Incorrect Individual Name/Receiving Company Name) had been used by RDFIs to request a correction to the name of the Receiver indicated in an ACH Entry. As with any Notification of Change, the RDFI that transmitted an NOC with this change code warranted the accuracy of the corrected data (in this case, the Receiver's name). The Originator was then obligated to make the requested change within six banking days or prior to initiating a subsequent Entry, whichever is later.

In certain scenarios, the use of C04 created compliance and liability challenges for the Originator, ODFI, and RDFI. Generally speaking, an ACH transaction involves a mutual customer of both the Originator and the RDFI. In the event that the Receiver's name on a debit Entry was different from the name on the account, most RDFIs would either post the Entry based solely on the account number or return the transaction using Return Reason Code R03 (No Account/Unable to Locate Account). In some cases, RDFIs transmitted NOCs using Change Code C04 to instruct the Originator to change the Receiver's name on future Entries. The use of

C04 presented additional risk to the RDFI and the ODFI and/or the Originator because the RDFI was warranting that the name change is accurate, but it did not always reflect the party with whom the Originator has the relationship. As a result, Originators were typically unable or unwilling to make the changes in accordance with their obligations under the NACHA Operating Rules. An Originator continuing to debit its customer without making the change warranted by the RDFI did so in violation of the current Rules, creating challenges and conflict for all parties. Eliminating Change Code C04 (Incorrect Individual Name/Receiving Company Name) removed the challenges and potential rules violations that Originators faced when they receive a request for a name change that they were unable to make. Under the amendment, an Originator can rely on its own contracts and records to properly identify the name of the Receiver being credited or debited without being in violation of the NACHA Operating Rules because of the failure to respond to an NOC.

Eliminating Change Code C04 (Incorrect Individual Name/Receiving Company Name) lessens the risk to the RDFI as it warrants that information contained in an NOC is correct. A change as significant as a name change should be accomplished through communication of the Receiver with the Originator so that the authorization held by the Originator is accurate. The RDFI that identifies a name mismatch can post the Entry based solely on the account number, return the Entry as R03, or choose to assist its Receiver by communicating directly with the ODFI/Originator. Any of these options should cause the Originator and the Receiver to communicate relating to needed changes while relieving the RDFI of the warranty that the information is correct.

We are proposing to accept this amendment.

## **11. ACH Operator Edit for Returns**

This amendment incorporated an additional ACH Operator edit within the listing of ACH Operator file/batch reject edit criteria specified within Appendix Two of the NACHA Operating Rules. Specifically, this edit requires ACH Operators to reject any batch of Return Entries in which RDFI returns and ACH Operator returns are commingled. By definition, different parties are responsible for generating each type of return, and each must be separately identified within the Company/Batch Header Record as the sender of the batch. This ACH Operator edit codifies this fact within the NACHA Operating Rules and ensures consistent processing of return batches by all ACH Operators.

We are proposing to accept this amendment.

B. 2015 NACHA Operating Rules & Guidelines Book Changes

The 2015 edition of the NACHA Operating Rules contains changes related to the following amendments<sup>1</sup>:

- ACH Network Risk and Enforcement;
- Improving ACH Network Quality - Unauthorized Entry Fee;
- Clarification on Company Identification for P2P WEB Credit Entries;
- Point-of-Sale Entries - Clarification of General Rule;
- Return Fee Entry Formatting Requirements;
- Entry Detail Record for Returns - Clarification Regarding POP Entries;
- Clarification of RDFI's Obligation to Recredit Receiver;
- Clarification on Prenotification Entries and Addenda Records; and

---

<sup>1</sup> The 2015 Rules & Guidelines book also included two amendments addressed in the 2014 Rules & Guidelines book that had effective dates in 2015: (1) Dishonored Returns and Contested Dishonored Returns Related to an Unintended Credit to a Receiver and (2) Notification of Change – Removal of Change Code C04. Because those amendments are addressed in Section A above, we are not including them in Section B.

- ACH Operator Edit for Returns.

We are proposing to incorporate in Part 210 all of the foregoing amendments, which are summarized below, other than some provisions of the amendment relating to ACH Network Risk and Enforcement and the amendment on Improving ACH Network Quality - Unauthorized Entry Fee.

## **1. ACH Network Risk and Enforcement**

This amendment expanded existing rules regarding ODFIs' and Third-Party Senders' requirements for risk management and origination practices, such as return rate levels. It also expanded NACHA's authority to initiate enforcement proceedings for a potential violation of the NACHA Operating Rules related to unauthorized Entries.

### ***Return Rate Levels***

The amendment reduced the threshold for unauthorized debit Entries (Return Reason Codes R05, R07, R10, R29, and R51) from 1.0 percent to 0.5 percent and also established two new return rate levels for other types of returns. First, a return rate level of 3.0 percent will apply to debit entries returned due to administrative or account data errors (Return Reason Codes R02 – Account Closed; R03 – No Account/Unable to Locate Account; and R04 – Invalid Account Number Structure). Second, a return rate level of 15.0 percent will apply to all debit entries (excluding RCK entries) that are returned for any reason.

The amendment also established an inquiry process, which is separate and distinct from an enforcement proceeding, as a starting point to evaluate the origination activity of Originators and Third-Party Senders that reach the new administrative return and overall debit return rate levels. The identification of an Originator or Third-Party Sender with a return rate that is higher than the respective return rate level may trigger a review of the Originator's or Third-Party

Sender's ACH origination procedures. At the conclusion of the inquiry, NACHA may determine that no further action is required, or it may take the next step and recommend to the ACH Rules Enforcement Panel that the ODFI be required to reduce the Originator's or Third-Party Sender's overall or administrative return rate below the established level.

In this new role, the ACH Rules Enforcement Panel will be the final authority in deciding, after the completion of the inquiry, whether the ODFI should be required to reduce the Originator's or Third-Party Sender's overall or administrative return rate. After reviewing NACHA's recommendation, the Panel can decide either to take no action, at which point the case would be closed, or to have NACHA send a written directive to the ODFI, which would require the reduction of the Originator's or Third-Party Sender's administrative or overall return rate.

We are proposing not to incorporate in Part 210 the provisions of the amendment relating to return rate levels. No change to the text of Part 210 is required to exclude these provisions because Part 210 already excludes Section 2.17 and Appendix 10, which is where the return rate level changes have been addressed in the NACHA Operating Rules.

### ***Reinitiation of Entries***

This amendment explicitly prohibited the reinitiation of Entries outside of the express limited circumstances under which they are permitted under the NACHA Operating Rules. The amendment also added a specific prohibition against reinitiating a transaction that was returned as unauthorized. The amendment further included an anti-evasion provision, specifying that any other Entry that NACHA reasonably believes represents an attempted evasion of the defined limitations will be treated as an improper reinitiation. The ACH Rules Enforcement Panel will

have final authority in deciding whether a specific case involves an attempted evasion of the limitations on reinitiation.

To avoid unintended consequences from these clarifications, the amendment included two categories of Entries that will not be considered reinitiations. First, the amendment clarified that a debit Entry in a series of preauthorized recurring debit Entries will not be treated as a reinitiated Entry, even if the subsequent debit Entry follows a returned debit Entry, as long as the subsequent Entry is not contingent upon whether an earlier debit Entry in the series has been returned. Second, the amendment expressly stated that a debit Entry will not be considered a “reinitiation” if the Originator obtains a new authorization for the debit Entry after the receipt of the Return.

The amendment requires a reinitiated Entry to contain identical content in the following fields: Company Name, Company ID, and Amount. Further, the amendment permits modification to other fields only to the extent necessary to correct an error or facilitate processing of an Entry. This change allows reinitiations to correct administrative errors, but prohibits reinitiation of Entries that may be attempts to evade the limitation on the reinitiation of returned Entries by varying the content of the Entry. Finally, the amendment addressed certain technical issues associated with the reinitiation requirements.

We are proposing to accept the reinitiation provisions of the amendment.

### ***Third-Party Sender Issues***

The amendment added a direct obligation on Third-Party Senders to monitor, assess and enforce limitations on their customer’s origination and return activities in the same manner the NACHA Operating require of ODFIs. Prior to this amendment, the NACHA Operating Rules required ODFIs to establish, implement, periodically review and enforce exposure limits for their

Originators and Third-Party Senders. The ODFI was required to monitor each Originator's and Third-Party Sender's origination and return activity across multiple Settlement Dates, enforce restrictions on the types of Entries that may be originated and enforce the exposure limit. If an ODFI enters into a relationship with a Third-Party Sender that processes Entries such that the ODFI itself cannot or does not perform these monitoring and enforcement tasks with respect to the Originators serviced by the Third-Party Sender, the Third-Party Sender must do so. The amendment added a specific statement of this obligation.

We are proposing to accept the Third-Party Sender provisions of the amendment.

***NACHA's Enforcement Authority***

The amendment provided NACHA with the express authority to bring an enforcement action based on the origination of unauthorized entries. To ensure the judicious use of the expanded authority, the amendment requires the ACH Rules Enforcement Panel to validate the materiality of this type of enforcement case before NACHA can initiate any such proceeding. In addition, the amendment encourages RDFIs to voluntarily provide to NACHA information, such as return data, that may be indicative of a potential *Rules* violation for improper authorization practices by other ACH Network participants, even if the RDFI is not interested in itself initiating a *Rules* enforcement proceeding. Such early sharing of information regarding unusual return rates or unauthorized transactions can help eliminate improper activities more quickly.

We are proposing not to incorporate in Part 210 the provisions of the amendment that relate to NACHA's enforcement authority. Part 210 excludes the government from the risk investigation and enforcement provisions of the NACHA Operating Rules. Fiscal Service tracks unauthorized return rates for Federal agencies and will use the new unauthorized return limits



and reinitiation limitations in overseeing agency ACH origination activity. No change to the text of Part 210 is required to exclude these provisions because Part 210 already excludes Appendix Ten of the NACHA Operating Rules, which governs rules enforcement.

## **2. Improving ACH Network Quality - Unauthorized Entry Fee**

This amendment requires an ODFI to pay a fee to the RDFI for each ACH debit that is returned as unauthorized (return reason codes R05, R07, R10, R29 and R51). RDFIs will be compensated for a portion of the costs they bear for handling unauthorized transactions, and will experience reduced costs due to a reduction in unauthorized transactions over time. The amendment provides that ODFIs and RDFIs authorize debits and credits to their accounts for the collection and distribution of the fees. IAT transactions are not covered by the fee, but could be included in the future. The amendment defines a methodology by which NACHA staff will set and review every three years the amount of the Unauthorized Entry Fee. In setting the amount of the fee, NACHA staff will apply several stated principles, including the review of RDFI cost surveys. Based on the results of the current data collection on RDFIs' costs for handling unauthorized transactions, NACHA has estimated that the fee amount will be in the range of \$3.50 - \$5.50 per return.

We are proposing not to incorporate this amendment in Part 210. Part 210 does not incorporate those provisions of the NACHA Operating Rules dealing with enforcement for noncompliance and the government therefore is not subject to fines for violation of the provisions of the ACH Rules. See 31 CFR Part 210.2(d)(2), (3). Fiscal Service works with agencies to achieve Government-wide compliance with all ACH Rule requirements and tracks compliance, including returns of unauthorized debit entries. The number of such returns is low in relation to originated entries: in calendar year 2015, approximately 73,000 ACH debits

originated by agencies were returned as unauthorized. Based on an estimated fee of \$3.50 - \$5.50, the resulting cost to the government would be approximately \$255,500-\$401,500 per year. We do not believe it is in the public interest to subject the Treasury General Account to fines of this nature. Rather, we propose to work with agencies to monitor and reduce the number of unauthorized debit entries.

### **3. Clarification of Company Identification for Person-to-Person WEB Credit Entries**

This amendment added language to the Company Identification field description to clarify content requirements for Person-to-Person (P2P) WEB credit Entries.

For P2P WEB credit Entries, the Company/Batch Header Record identifies the P2P service provider (i.e., the consumer Originator's own financial institution or a third-party service provider) rather than the consumer Originator. Prior to the amendment, the NACHA Operating Rules specifically defined service provider content requirements for the Company Name field, but omitted the same clarification for the Company Identification, which is a related field. The purpose of the amendment was to eliminate any potential confusion over proper formatting of this field.

We are proposing to accept this amendment.

### **4. Point-of-Sale (POS) Entries – Clarification of General Rule**

This amendment re-aligned the general rule for POS Entries with the definition of POS Entries in Article Eight. A POS Entry is generally considered to be a debit Entry initiated at an electronic terminal by a consumer to pay an obligation incurred in a point-of-sale transaction. However, a POS Entry can also be an adjusting or other credit Entry related to the debit Entry, transfer of funds, or obligation (for example, a credit to refund a previous point-of-sale transaction). Prior to the amendment, the definition of POS within the NACHA Operating Rules

recognized these Entries as both debits and credits, but the general rule for POS identified POS Entries only as debits. This amendment corrected the discrepancy.

We are proposing to accept this amendment.

## **5. Return Fee Entry Formatting Requirements**

This amendment modified the description of the Individual Name Field in a PPD Return Fee Entry related to a returned ARC, BOC, or POP Entry to require that it contain the same information identified within the original ARC, BOC, or POP Entry. The Individual Name Field is optional for ARC, BOC, and POP; therefore, this field (1) may include the Receiver's name, (2) may include a reference number, identification number, or code that the merchant needs to identify the particular transaction or customer, or (3) may be blank.

The name of the Receiver must be included in all PPD Entries. With ARC, BOC, or POP Entries, where a reading device must be used to capture the Receiver's routing number, account number, and check serial number, it is difficult for the Originator to capture the Receiver's name in an automated fashion. For this reason, the NACHA Operating Rules do not require Originators to include the Receiver's name in the ARC, BOC, or POP Entry Detail Record. Originators are permitted the choice of including either the Receiver's name, or a reference number, identification number, or code necessary to identify the transaction, or the field may be left blank. Because information contained within the returned ARC, BOC, or POP Entry is typically used to create a related Return Fee Entry, the Receiver's name is likely not readily available to the Originator for use in the Return Fee Entry, especially when the Receiver's authorization for the Return Fee Entry was obtained by notice. This amendment established consistent formatting requirements with respect to the Receiver's name for check conversion entries and related return fees.

We are proposing to accept this amendment.

**6. Entry Detail Record for Returns – Clarification Regarding POP Entries**

This amendment added a footnote to the Entry Detail Record for Return Entries to clarify the specific use of positions 40-54 with respect to the return of a POP Entry. On a forward POP Entry, positions 40-54 represent three separate fields to convey (1) the check serial number (positions 40-48); (2) the truncated name or abbreviation of the city or town in which the electronic terminal is located (positions 49-52); and (3) the state in which the electronic terminal is located (positions 53-54). However, these three fields are not explicitly identified in the Entry Detail Record for Return Entries, which caused some confusion among users as to how to map such information from the original forward Entry into the Return Entry format.

We are proposing to accept this amendment.

**7. Clarification of RDFI's Obligation to Recredit Receiver**

This amendment clarified that an RDFI's obligation to recredit a Receiver for an unauthorized or improper debit Entry is generally limited to Consumer Accounts, with certain exceptions for check conversion and international transactions. Prior to the NACHA Operating Rules simplification initiative in 2010, the rules governing a Receiver's right to recredit for unauthorized debit entries clearly limited this provision to debit Entries affecting Consumer Accounts, except as expressly provided for ARC, BOC, IAT, and POP Entries (which can affect both consumer and business accounts). However, when rules language was combined and revised during the simplification process into a general discussion on recredit, some of this clarity was lost, resulting in language that was somewhat ambiguous and the cause of confusion for some ACH participants. This change more clearly defines the intent of the rule requirement for an RDFI to recredit a Receiver.

We are proposing to accept this amendment.

## **8. Clarification of Prenotification Entries and Addenda Records**

This amendment revised the NACHA Operating Rules to clarify that, with the exception of IAT Entries, a prenotification Entry is not required to include addenda records that are associated with a subsequent live Entry. Generally speaking, the format of a Prenotification Entry must be the same as the format of a live dollar Entry. There are, however, some differences between Prenotes and live Entries to which the Prenotes relate:

- the dollar amount of a Prenotification Entry must be zero;
- a Prenotification Entry is identified by a unique transaction code; and
- addenda records associated with a live Entry are not required with Prenotes (unless the Prenote relates to an IAT Entry).

While the first two formatting criteria above for Prenotification Entries are clearly defined within the technical standards and are commonly understood by industry participants, the issue of whether Prenotification Entries require addenda records was somewhat ambiguous. The amendment eliminated that ambiguity.

We are proposing to accept this amendment.

## **9. ACH Operator Edit for Returns**

This amendment incorporated an additional ACH Operator edit within the listing of ACH Operator file/batch reject edit criteria specified within Appendix Two of the NACHA Operating Rules. Specifically, this edit requires ACH Operators to reject any batch of Return Entries in which RDFI returns and ACH Operator returns are commingled. By definition, different parties are responsible for generating each type of return, and each must be separately identified within

the Company/Batch Header Record as the sender of the batch. This ACH Operator edit codifies this fact and ensures consistent processing of return batches by all ACH Operators.

We are proposing to accept this amendment.

C. 2016 NACHA Operating Rules & Guidelines Book Changes

The 2016 edition of the *NACHA Operating Rules & Guidelines* contains changes related to the following amendments<sup>2</sup>:

- Same-Day ACH: Moving Payments Faster;
- Disclosure Requirements for POS Entries;
- Recrediting Receiver - Removal of Fifteen Calendar Day Notification Time Frame;
- Clarification of RDFI Warranties for Notifications of Change; and
- Minor Rules Topics.

We are proposing to incorporate in Part 210 all of the foregoing amendments except that we are proposing to delay our implementation of Same-Day ACH as discussed below.

**1. Same-Day ACH: Moving Payments Faster**

This amendment will allow for same-day processing of ACH payments. Currently, the standard settlement period for ACH transactions is one or two business days after processing. The Same-Day ACH amendment will enable the option for same-day processing and settlement of ACH payments through new ACH Network functionality without affecting existing ACH schedules and capabilities. Originators that desire same-day processing will have the option to send Same Day ACH Entries to accounts at any RDFI. All RDFIs will be required to receive

---

<sup>2</sup> The 2016 Rule Book also codified changes related to the rule NACHA adopted in 2015 on Improving ACH Network Quality (Unauthorized Entry Fee), which is addressed above in Section B - 2015 NACHA Operating Rule Book Changes.

Same-Day ACH Entries, which gives ODFIs and Originators the certainty of being able to send same day ACH Entries to accounts at all RDFIs in the ACH Network. The amendment includes a “Same-Day Entry fee” on each Same-Day ACH transaction to help mitigate RDFI costs for supporting Same-Day ACH.

The amendment has a phased implementation period, spreading from 2016 to 2018, with the following effective dates:

- Phase 1 - September 23, 2016: ACH credits will be eligible to be processed during two new Same-Day ACH windows with submission deadlines at 10:30 a.m. ET and 2:45 p.m. ET, with settlement occurring at 1:00 p.m. ET and 5:00 p.m. ET, respectively. RDFIs will be required to provide funds availability by the end of the RDFI’s processing day. Applicable to ACH credits only and non-monetary Entries, with funds availability due at the end of the RDFI’s processing day.
- Phase 2 - September 15, 2017: ACH debits will become eligible for same-day processing during the two new Same-Day windows.
- Phase 3 - March 16, 2018: RDFIs will be required to provide funds availability for same day credits no later than 5:00 p.m. at the RDFI’s local time.

The existing next-day ACH settlement window of 8:30 a.m. ET will not change. With the addition of the new Same-Day ACH processing windows, the ACH Network will provide three opportunities for ACH settlement each day.

### ***Payment Eligibility***

Virtually all types of ACH payments will be eligible for same-day processing by the end of the implementation period. The only ACH transactions ineligible for same-day processing will be IAT transactions and individual transactions over \$25,000.

In addition to credits and debits, the ACH Network supports a number of transaction types that do not transfer a dollar value. Non-monetary transactions include Prenotifications; Notifications of Change (NOCs); Zero Dollar Entries that convey remittance information using CCDs and CTXs; and Death Notification Entries. With the exception of Prenotifications for future debit Entries, these non-monetary transactions will be eligible for same-day processing from the outset. Automated Enrollment Entries (ENRs) do not use Effective Entry Dates. Since there will not be a way to distinguish same day ENR Entries from next-day Entries, ENRs will not be processed as same day transactions.

#### ***Identification of Same-Day Transactions via the Effective Entry Date***

Same-Day ACH transactions will be identified by the ODFI and its Originator by using the current day's date in the Effective Entry Date field of the Company/Batch Header Record. (Note: The NACHA Operating Rules define the Effective Entry Date as "the date specified by the Originator on which it intends a batch of Entries to be settled.") In addition, transactions intended for same-day processing that carry a current day Effective Entry Date will need to meet an ACH Operator's submission deadline for same-day processing. For example, transactions originated on Monday, October 10, 2016 that are intended for same-day processing must have an Effective Entry Date of "161010" in the Company/Batch Header Record and be submitted to an ACH Operator no later than the 2:45 p.m. ET deadline to ensure same-day settlement. Any Entry carrying the current day's date in the Effective Entry Date field that is submitted prior to an ACH Operator's same-day processing submission deadline will be handled as a Same-Day ACH transaction and assessed the Same-Day Entry fee.

#### ***Stale or Invalid Effective Entry Dates***



In the current processing environment, any batch of Entries submitted to an ACH Operator that contains an Effective Entry Date that is invalid or stale (in the past) is processed at the next settlement opportunity, which is currently the next banking day. With the arrival of same-day processing, the same protocol will apply. ACH transactions submitted to an ACH Operator with stale or invalid Effective Entry Dates will be settled at the earliest opportunity, which could be the same-day. If the transactions are submitted prior to the close of the second same-day processing window at 2:45 p.m. ET, the Entries will be settled the same-day and the Same-Day Entry fee will apply. If the transactions are submitted to the ACH Operator after 2:45 p.m. ET, the Entries will be settled the next day and the Same-Day Entry fee will not apply.

#### ***Return Entry Processing***

The amendment allows same-day processing of return Entries at the discretion of the RDFI, whether or not the forward Entry was a Same-Day ACH transaction. Any return Entry will be eligible for settlement on a same-day basis; the \$25,000 per transaction limit and IAT restriction will not apply. Because returns are initiated and flow from RDFI to ODFI, return Entries processed on a same-day basis will not be subject to the Same-Day Entry fee. RDFIs will not be required to process returns on the same-day that the forward Entry is received. The existing return time frame (the return Entry must be processed in such time that it is made available to the ODFI no later than the opening of business on the second banking day following the Settlement Date of the original Entry) will still be applicable. RDFIs will have the option of using any of the available settlement windows for returns, as long as the existing return time frame is met.

#### ***Same-Day Entry Fee***

In order to ensure universal reach to any account at any RDFI, all RDFIs must implement Same-Day ACH. To assist RDFIs in recovering costs associated with enabling same-day transactions, the amendment includes a fee paid from the ODFI to the RDFI for each Same-Day ACH Entry. The fee provides a mechanism to help RDFIs mitigate investment and operating expenses and provide a fair return on their required investments. The initial Same-Day Entry fee is set at 5.2 cents per Same Day Entry. The fee will be assessed and collected by the ACH Operators through their established monthly billing. The Rule includes a methodology to measure the effectiveness of the Same-Day Entry fee at five, eight and ten full years after implementation. After each review, the Same-Day Entry fee could be maintained or lowered, but not increased.

We are proposing to accept the Same-Day amendment but with delayed implementation of NACHA's Phase 1 implementation date where the government is receiving Same-Day credit Entries. Fiscal Service plans to enable agencies to originate Same-Day Entries in appropriate situations and will work with agencies to develop and publish guidance outlining the criteria and procedures to be used for originating Same-Day Entries. Fiscal Service believes that Same-Day credit Entries may be useful to agencies that need to make certain emergency or time-sensitive payments, including payments not exceeding \$25,000 that are currently made by Fedwire. We believe that the majority of ACH credit Entries originated by the government are not suitable for same-day processing in light of the fee payable for Same-Day Entries, and therefore we anticipate that the government's origination of Same-Day Entries will be limited. We plan to publish guidance for agencies that will set forth both the criteria and the procedure for certifying a Same-Day ACH transaction. That guidance will indicate whether agencies should indicate their intent for same-day processing and settlement solely by utilizing the Effective Entry Date,

or may also utilize the optional standardized content in the Company Descriptive Date field as a same-day transaction indicator.

With regard to Same-Day ACH credit Entries received by the Federal Government, we are proposing to begin processing those Same-Day Entries on a same-day basis beginning no earlier than August 30, 2017 rather than on NACHA's Phase 1 implementation date of September 23, 2016. This delayed implementation date reflects coding and reporting changes and testing that must be undertaken to enable the processing of incoming Same-Day credit Entries by Fiscal Service's ACH credit processing systems. Any ACH credit Entry received by the U.S. government prior to August 30, 2017, will not be eligible for same-day settlement and will continue to settle on a future date (typically the next banking day) regardless of submission date and time. We are not proposing any delay to the NACHA Same-Day ACH amendment's Phase 2 or Phase 3 implementation dates for the Government's same-day processing.

The 2016 NACHA Operating Rules incorporate in the rule text only those provisions of the Same-Day ACH amendment that have effective dates in 2016. However, in order to provide advance notice of the impact of the Phase 2 and 3 implementations, the 2016 Rules Book sets forth the sections of the NACHA Operating Rules affected by the Same-Day ACH amendment as they will read upon implementation in 2017 and 2018.

We are proposing to incorporate in Part 210 the future changes relating to the Same-Day ACH amendment's Phase 2 and 3 implementation provisions scheduled for 2017 and 2018 as they appear in the 2016 NACHA Operating Rules & Guidelines book.

## **2. Disclosure Requirements for POS Entries**

This amendment established an Originator/Third-Party Service Provider obligation to provide consumer Receivers with certain disclosures when providing those consumers with cards

used to initiate ACH Point of Sale (POS) Entries. The amendment requires Originators or Third-Party Service Providers that issue ACH cards (or their virtual, non-card equivalent, collectively referred to as “ACH Cards”) to make the following disclosures in written or electronic, retainable form to a consumer prior to activation:

- The ACH Card is not issued by the consumer’s Depository Financial Institution.
- POS Entries made with the ACH Card that exceed the balance in the consumer’s financial institution account may result in overdrafts and associated fees, regardless of whether the consumer has opted to allow overdrafts with respect to debit cards issued by the Depository Financial Institution that holds the consumer’s account.
- Benefits and protections for transactions made using the ACH Card may vary from those available through debit cards issued by the consumer’s Depository Financial Institution.

The amendment included sample language for Originators or Third-Party Service Providers to consider in designing an ACH Card disclosure for purposes of compliance with the NACHA Operating Rules. This amendment will not affect Agencies because they do not issue ACH Cards.

We are proposing to accept this amendment.

### **3. Recrediting Receiver – Removal of Fifteen Calendar Day Notification Time Frame**

This amendment removed the fifteen calendar day notification period associated with an RDFI’s obligation to promptly recredit a consumer account for an unauthorized debit Entry, and aligned the RDFI’s recredit obligation with its ability to transmit an Extended Return Entry. Because of the extended return window for unauthorized consumer debits under the NACHA Operating Rules, prior to the amendment many RDFIs found the reference to the fifteen calendar day timing to be a source of confusion and misunderstanding. The amendment revised the

NACHA Operating Rules to align the provision for prompt recredit with the RDFI's receipt of a Written Statement of Unauthorized Debit from the consumer and the RDFI's ability to transmit an Extended Return Entry (i.e., transmitted to the ACH Operator so that the Extended Return Entry is made available to the ODFI no later than opening of business on the banking day following the sixtieth calendar day following the settlement date of the original Entry). This change applies to unauthorized/improper entries bearing Standard Entry Class Codes (SECs) that are classified as consumer entries, as well as those that can be both consumer and non-consumer entries (ARC, BOC, POP, and IAT debit entries).

We are proposing to accept this amendment.

#### **4. Clarification of RDFI Warranties for Notifications of Change**

This amendment modified the NACHA Operating Rules with respect to Notifications of Change (NOCs) to clarify aspects of: 1) the RDFI's warranties made with respect to its transmission of a Notification of Change or Corrected Notification of Change; and 2) the ODFI's warranties made with respect to usage of the corrected data within subsequent transactions. Specifically, the amendment clarified that the RDFI's warranty for information contained in a Notification of Change or Corrected Notification of Change is applicable only to the corrected information supplied by the RDFI.

This modification removed from the RDFI's warranty on NOCs the specific statement that the Receiver has authorized the change identified in the NOC, if the Receiver's authorization is required. This subsection has been misinterpreted to mean that it supersedes the ODFI's warranty that a subsequent Entry is properly authorized by the Receiver. The RDFI does not warrant that the Entry itself has been properly authorized by the Receiver, but only that the data supplied in the Corrected Data field is accurate. The warranty that any Entry (including a

subsequent Entry that uses corrected data from an NOC) is properly authorized still lies with the ODFI per Article Two, Subsection 2.4.1.1 (The Entry is Authorized by the Originator and Receiver).

We are proposing to accept this amendment.

## **5. Minor Rules Topics**

These amendments changed four areas of the NACHA Operating Rules to address minor topics. Minor changes to the NACHA Operating Rules have little-to-no impact on ACH participants and no significant economic impact.

### ***i. Clarification of ODFI Periodic Statement Requirements for CIE and WEB Credits***

This amendment made minor, editorial clarifications to the language within Article Two, Subsections 2.5.4.2 (ODFI to Satisfy Periodic Statement Requirement) and 2.5.17.6 (ODFI to Satisfy Periodic Statement Requirement for Credit WEB Entries) to clarify the intent of language governing an ODFI's periodic statement obligations with respect to the origination of CIE and credit WEB Entries by consumers.

Periodic statement requirements typically are an obligation of the RDFI for the receipt of Entries to a consumer account. For CIE and WEB credits, however, the Originator of the ACH credit also is a consumer, thus putting periodic statement requirements on the ODFI as well for these entries. These clarifications do not affect the substance of the ODFI's obligation to identify on the consumer Originator's periodic statement the date, amount, and description of a transaction involving the consumer's account; rather, they simply recognize that the debiting of the consumer's account to provide funds for the CIE or WEB credit could be accomplished by something other than an ACH debit.

We are proposing to accept this amendment.

***ii. Clarifying the Commercially Reasonable Encryption Standard***

The NACHA Operating Rules require ACH participants to utilize a commercially reasonable standard of encryption technology when transmitting any banking information related to an Entry via an Unsecured Electronic Network. This amendment removed the reference to 128-bit encryption technology as the minimum acceptable commercially reasonable standard, but retained the general reference to using a commercially reasonable level of encryption. The amendment also clarified that a commercially reasonable level of security must comply with current, applicable regulatory guidelines, which already impose more rigorous encryption obligations.

Prior to the amendment the NACHA Operating Rules established a minimum for this commercially reasonable encryption standard at the 128-bit RC4 encryption technology level. A task force of NACHA's former Internet Council, comprised of technology expert members, recommended that the specific reference to 128-bit RC4 encryption be removed, on the grounds that it is now out of date as a commercially reasonable standard.

We are proposing to accept this amendment.

***iii. Definition of Zero-Dollar Entry***

This amendment reintroduced the definition of a Zero-Dollar Entry within Article Eight (Definitions of Terms Used in These Rules) to correspond to unique technical references in the Appendices of the NACHA Operating Rules. Zero Dollar Entries are unique in that, although their dollar amount is zero, they bear remittance data that must be provided to the Receiver in an identical manner as "live" entries that transfer funds. The definition was removed in 2010 when the definition of a "Non-Monetary Entry" was introduced into the NACHA Operating Rules.

We are proposing to accept this amendment.

***iv. Expansion of Permissible Criteria for ODFI Requests for Return***

In addition to being able to request the return of an Erroneous Entry, as permitted by the NACHA Operating Rules, this amendment revised the NACHA Operating Rules to permit an ODFI to request that an RDFI return any Entry that the ODFI claims was originated without the authorization of the Originator. This amendment also expanded the description of Return Reason Code R06 (Returned per ODFI's Request) to include Entries returned by the RDFI for this reason. This newly permissible circumstance reflects actual current industry practice with regard to the recovery of funds related to unauthorized credit origination.

Use of the ODFI Request for Return process is always optional on the part of both ODFIs and RDFIs. An RDFI will continue to be able to make its own business decision about whether to agree to return an Entry that the ODFI claims was originated without the authorization of the Originator. An RDFI responding to a request for the return of such an Entry will be indemnified under the NACHA Operating Rules against loss or liability by the ODFI.

We are proposing to accept this amendment.

**D. Notification of Reversals**

NACHA Operating Rule 2.9.1 requires that the Originator of a Reversing Entry make a reasonable attempt to notify the Receiver of the Reversing Entry and the reason for the Reversing Entry no later than the settlement date of the Entry. In attempting to contact Receivers regarding the reversal of a duplicate or erroneous Entry on behalf of federal agencies, Fiscal Service has found that efforts to reach Receivers, typically through the RDFI, are often unsuccessful. Adhering to the notification requirement also impedes the timeliness and efficiency of originating reversals, which is disadvantageous both for Fiscal Service and for



Receivers. Accordingly, we are proposing to exclude this requirement from incorporation in Part 210.

We request comment on whether this exclusion raises any concerns for Receivers or RDFIs.

#### E. Prepaid Cards

In 2010, Fiscal Service amended Part 210 to establish requirements that prepaid cards receiving Federal payments must meet. 75 FR 80335. To be eligible to receive Federal payments, a prepaid card must meet four conditions: (1) the card account must be held at an insured financial institution; (2) the account be set up to meet the requirements for pass through deposit or share insurance under 12 CFR part 330 or 12 CFR part 745; (3) the account may not be attached to a line of credit or loan agreement under which repayment from the card account is triggered by delivery of the Federal payment; and (4) the issuer of the card must comply with all of the requirements, and provide the Federal payment recipient with the same consumer protections, that apply to a payroll card under regulations implementing the Electronic Fund Transfer Act, 15 U.S.C. 1693a(1). See 31 CFR 210.5(b)(5)(i).

We required that prepaid cards provide Regulation E payroll card protections because when our prepaid rule was issued in 2010, Regulation E did not cover any prepaid cards other than payroll cards. However, on October 5, 2016, the Consumer Financial Protection Bureau (CFPB) released its final rule to amend Regulation E to cover prepaid accounts. We are therefore proposing to amend our prepaid rule to replace the reference in 210.5(b)(5)(i)(D) to “payroll card” with a reference to “prepaid account,” so that the requirement would read: “The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a prepaid account under the rules implementing the

Electronic Fund Transfer Act, as amended.” We would also delete the definition of “payroll card account” from the rule because it would be unnecessary. These changes would be effective on the effective date of the CFPB’s final rule. We request comment on this proposed amendment.

### **III. Section-by-Section Analysis**

In order to incorporate in Part 210 the NACHA Operating Rule changes that we are accepting, we are replacing references to the 2013 NACHA Rules & Guidelines book with references to the 2016 NACHA Operating Rules & Guidelines book. Several of the NACHA Operating Rule amendments that we are not proposing to incorporate are modifications to provisions of the NACHA Operating Rules that are already excluded under Part 210. Other than replacing the references to the 2013 NACHA Operating Rules & Guidelines book, no change to Part 210 is necessary to exclude those amendments.

#### **§ 210.2**

We are proposing to amend the definition of “applicable ACH Rules” at § 210.2(d) to reference the rules published in NACHA’s 2016 Rules & Guidelines book rather than the rules published in NACHA’s 2013 Rules & Guidelines book. The definition has been updated to reflect the reorganization and renumbering of the NACHA Operating Rules. A reference to Section 1.11 of the NACHA Operating Rules is added to § 210.2(d)(1) in order to exclude from Part 210 the imposition of fees for ACH debits that are returned as unauthorized. The reference in § 210.2(d)(6) to the NACHA Operating Rule governing International ACH Transactions section has been updated by replacing an obsolete reference to ACH Rule 2.11 with the correct reference to Section 2.5.8. A new paragraph (7) is added to § 210.2(d) to exclude from Part 210 the requirement to make a reasonable attempt to notify the Receiver of a Reversing Entry under Subsection 2.9.1 of the NACHA Operating Rules. A new paragraph (8) is added to exclude from

Part 210, until July 1, 2017, the provisions of Subsection 3.3.1.1, Section 8.99 and Appendix Three (definition of Effective Entry Date) that require an RDFI to make the amount of a credit Same-Day Entry available no later than the completion for that Settlement Date.

#### § 210.3(b)

We are proposing to amend § 210.3(b) by replacing the references to the ACH Rules as published in the 2013 Rules & Guidelines book with references to the ACH Rules as published in the 2016 NACHA Operating Rules & Guidelines book.

#### § 210.6

In § 210.6 we are proposing to replace the reference to ACH Rule 2.4.4 with a reference to ACH Rule 2.4.5 to reflect the re-numbering of ACH Rule 2.4.4. This change is not substantive.

#### § 210.8

In § 210.8(b) we are proposing to replace the reference to ACH Rule 2.4.4 with a reference to ACH Rule 2.4.5 to reflect the re-numbering of ACH Rule 2.4.4. This change is not substantive.

### **IV. Incorporation by Reference**

In this rule, Fiscal Service is proposing to incorporate by reference the 2016 NACHA Operating Rules & Guidelines book. The Office of Federal Register (OFR) regulations require that agencies discuss in the preamble of a proposed rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with OFR's requirements, the discussion in the Supplementary Information section summarizes

the 2016 NACHA Operating Rules. Financial institutions utilizing the ACH Network are bound by the NACHA Operating Rules and have access to the NACHA Operating Rules in the course of their everyday business. The NACHA Operating Rules are available as a bound book or in online form from NACHA – The Electronic Payments Association, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, [info@nacha.org](mailto:info@nacha.org).

## **V. Procedural Analysis**

### *Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

### *Regulatory Planning and Review*

The proposed rule does not meet the criteria for a “significant regulatory action” as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

### *Regulatory Flexibility Act Analysis*

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the Federal government a number of changes that NACHA -- The Electronic Payments Association, has already adopted and imposed on private sector entities that utilize the ACH Network. The proposed rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act

(5 U.S.C. 601 et seq) is not required.

#### *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

#### **List of Subjects in 31 CFR Part 210**

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and  
Incorporation by reference

#### **Words of Issuance**

For the reasons set out in the preamble, we propose to amend 31 CFR part 210 as follows:

#### **PART 210 - FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE**

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. In § 210.2, revise paragraph (d) to read as follows:

**§ 210.2 Definitions.**

\* \* \* \* \*

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before March 16, 2018, as published in “2016 NACHA Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network” and supplements thereto, except:

(1) Section 1.11; Subsections 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6; Appendix Seven; Appendix Eight; Appendix Nine and Appendix Ten (governing the enforcement of the ACH Rules, including self-audit requirements, and claims for compensation);

(2) Section 2.10 and Section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator (see definition of “Effective Entry Date” in Appendix Three);

(4) Section 2.2 (setting forth ODFI obligations to enter into agreements with, and perform risk management relating to, Originators and Third-Party Senders) and Section 1.6 (Security Requirements);

(5) Section 2.17 (requiring reporting and reduction of high rates of entries returned as unauthorized);

(6) The requirements of Section 2.5.8 (International ACH Transactions) shall not apply to entries representing the payment of a Federal tax obligation by a taxpayer;

(7) The requirement to make a reasonable attempt to notify the Receiver of a Reversing Entry under Subsection 2.9.1; and

(8) Until August 30, 2017, the provisions of Subsection 3.3.1.1, Section 8.99 and Appendix Three (definition of Effective Entry Date) that require an RDFI to make the amount of a credit Same-Day Entry available no later than the completion for that Settlement Date.

\* \* \* \* \*

3. In § 210.3, revise paragraph (b) to read as follows:

**§ 210.3 Governing law.**

\* \* \* \* \*

(b) *Incorporation by reference -- applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before March 16, 2018, as published in the "2016 NACHA Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network," and supplements thereto. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "2016 NACHA Operating Rules & Guidelines" are available from NACHA – The Electronic Payments Association, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, info@nacha.org. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20002; and the Bureau of the Fiscal Service, 401 14<sup>th</sup> Street, S.W., Room 400A, Washington, D.C. 20227.

(2) Any amendment to the applicable ACH Rules approved by NACHA – The Electronic Payments Association after publication of the 2016 NACHA Operating Rules & Guidelines shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

\* \* \* \* \*

4. Revise § 210.6 to read as follows:

**§ 210.6 Agencies.**

Notwithstanding any provision of the ACH Rules, including Subsections 2.4.5, 2.8.4, 4.3.5, 2.9.2, 3.2.2, and 3.13.3, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an Originator or an ODFI for any loss



sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section

shall comply with the time limitations set forth in the applicable ACH Rules.

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase. The requirements of ACH Rules Subsections 2.3.2.2 and 2.5.10.1 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Return Fee Entry.* An agency that has authority to collect returned item service fees may do so by originating a Return Fee Entry if the agency provides notice to the Receiver in accordance with the ACH Rules.”

5. In § 210.8, revise paragraphs (a) and (b) to read as follows:

**§ 210.8 Financial institutions.**

(a) *Status as a Treasury depository.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depository. A financial institution shall not advertise itself as a Treasury depository on such basis.

(b) *Liability.* Notwithstanding ACH Rules Subsections 2.4.5, 2.8.4, 4.3.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry.

Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 et seq.

\* \* \* \* \*

Dated: November 23, 2016.

---

**David A. Lebryk**

Fiscal Assistant Secretary

[FR Doc. 2016-28671 Filed: 11/29/2016 8:45 am; Publication Date: 11/30/2016]